

1 THE HONORABLE JOHN C. COUGHENOUR
2
3
4
5
6
7

8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 PACIFIC COAST MARITIME, INC., a
12 Washington corporation, HARLEY
13 MARINE FINANCING, LLC, a
14 Delaware limited liability company,

15 Plaintiffs,

16 v.

17 EAST WEST SEAFOODS, LLC, a
18 Washington limited liability company, *in
19 personam*, and F/V PACIFIC PRODUCER,
20 O.N. 250021, her engines, appurtenances,
21 tackles, and gear, *in rem*,

22 Defendants.

23 IN ADMIRALTY
24 NO. 3:23-cv-05011-JCC

25 **[PROPOSED]**

26 **ORDER GRANTING *EX PARTE*
MOTION FOR APPOINTMENT
OF SUBSTITUTE CUSTODIAN
AND APPOINTING MARINE
LENDERS SERVICES, LLC AS
SUBSTITUTE CUSTODIAN**

27 On January 5, 2023, plaintiffs Pacific Coast Maritime and Harley Marine
28 Financing filed their *Verified Complaint* herein, requesting that the vessel PACIFIC
29 PRODUCER, Official Number O.N. 250021, its engines, machinery, and other
30 appurtenances, etc., be condemned and sold to pay plaintiffs' claims and for other
31 proper relief.

32 1. It is anticipated that the Clerk of the Court will be authorized by this
33 Court to issue a Warrant of Arrest commanding the United States Marshal for this
34 District to arrest and take the defendant vessel into custody and to detain it in custody

35 [PROPOSED] ORDER RE: MOTION FOR SUB.
36 CUSTODIAN - 1
37 CASE NO. 3:23-cv-05011-JCC

38 ATTORNEYS AT LAW
39 BAUER MOYNIHAN & JOHNSON LLP
40 2101 FOURTH AVENUE, STE. 2400
41 SEATTLE, WASHINGTON 98121
42 TELEPHONE: (206) 443-3400

1 until further order of this Court.

2 2. It is contemplated that the United States Marshal will seize the defendant
 3 vessel forthwith. Custody by the U.S. Marshal requires the services of one or more
 4 keepers at a charge of at least \$1,200.00 per day per keeper, not including charges for
 5 moorage and the other services usually associated with safekeeping vessel similar to
 6 the defendant vessel.

7 3. The defendant vessel is currently moored in the Foss Waterway in
 8 Tacoma, Washington at 1510 E D Street (the old “J M Martinac Shipbuilding
 9 Corporation”). After arrest, it may be necessary to move the vessel to other suitable
 10 moorage. It may also be necessary to offload any remaining cargo from the vessel.

11 4. Plaintiff is agreeable to allowing Marine Lenders Services, LLC to
 12 assume the responsibility of safekeeping said vessel and Marine Lenders Services,
 13 LLC has consented to act as custodian of the vessel until further order of this Court.
 14 Fees and expenses to be charged by Marine Lenders Services, LLC will be
 15 substantially less than the cost of leaving the defendant vessel in the custody of the
 16 U.S. Marshal.

17 5. Buck W. Fowler Jr, Managing Member by declaration, has stated that
 18 Marine Lenders Services, LLC has no interest in the outcome of this lawsuit, can
 19 arrange for adequate facilities and supervision for the proper safekeeping of the vessel,
 20 and has obtained the legal liability insurance through Great American (Policy No.
 21 CL1932503366) with policy limits of not less than \$2,000,000 which is expected to be
 22 adequate to respond in damages for loss of or injury to the defendant vessel resulting
 23 from their legal liability or for damages sustained by third parties due to any acts,
 24 faults or negligence of the substitute custodian. Further, in his declaration, Buck W.
 25 Fowler Jr, on behalf of Marine Lenders Services, LLC has agreed to accept custody of
 26 the vessel and its equipment in accordance with the terms of this Order.

[PROPOSED] ORDER RE: MOTION FOR SUB.
 CUSTODIAN - 2
 CASE NO. 3:23-cv-05011-JCC

ATTORNEYS AT LAW
 BAUER MOYNIHAN & JOHNSON LLP
 2101 FOURTH AVENUE, STE. 2400
 SEATTLE, WASHINGTON 98121
 TELEPHONE: (206) 443-3400

6. In consideration of the U.S. Marshal's consent to the appointment of Marine Lenders Services, LLC as substitute custodian, plaintiff agrees to release the United States and the U.S. Marshal from any and all liability and responsibility arising out of the care and custody of the defendant vessel and its equipment, from the time the U.S. Marshal transfers custody of the vessel over to the substitute custodian, and plaintiff further agrees to indemnify and hold the United States and the U.S. Marshal harmless from any and all claims whatsoever arising out of the substitute custodian's possession and safekeeping of the vessel.

NOW, THEREFORE, THE COURT ORDERS:

1. That upon the seizure of the defendant vessel, the PACIFIC PRODUCER, O.N. 250021, its engines, tackle and other appurtenances pursuant to the Warrant of Arrest, the U.S. Marshal is authorized and directed to surrender custody of the vessel to Marine Lenders Services, LLC as substitute custodian herein, and that upon such surrender, the Marshal shall be discharged from his/her duties and responsibilities for the safekeeping of the vessel and held harmless from any and all claims arising out of said custodial services.

2. That Marine Lenders Services, LLC, as substitute custodian, shall see to and be responsible for the safekeeping of the defendant vessel. The duties of the substitute custodian shall include, but are not limited to, ensuring that there is adequate, safe moorage for the vessel. The substitute custodian is not required to have a person live on board the vessel, but an officer or authorized agent of the substitute custodian shall go on board the vessel, from time to time to carry out the duties of substitute custodian. No other person shall be allowed to enter on the vessel except as provided for herein or as otherwise expressly authorized by order of this Court.

3. That the defendant vessel may be moved by tug or other safe means from its present moorage to adequate, safe moorage. The substitute custodian shall notify

1 the office of the U.S. Marshal that the vessel is to be moved and shall again notify the
 2 office of the U.S. Marshal when the vessel has been moved. Once the vessel has been
 3 moved to suitable moorage, the defendant vessel shall not be moved again without
 4 further order of the Court.

5 4. That Marine Lenders Services, LLC, as substitute custodian, may if
 6 necessary offload any cargo aboard the vessel and arrange for storage of the same at a
 7 suitable storage facility. The substitute custodian shall notify the office of the U.S.
 8 Marshal prior to engaging in any such offloading of cargo and again upon the
 9 completion of any such offloading.

10 5. That Marine Lenders Services, LLC, as substitute custodian, with
 11 plaintiffs' approval, may permit the Vessel to conduct normal operations while under
 12 Marine Lenders Services LLC custodianship, including fueling, loading, discharging,
 13 cargo handling, repairs, and vessel movement within the District, but at the risk and
 14 expense of the Vessel's interests. The substitute custodian Marine Lenders Services,
 15 LLC shall ensure that the operations of the Vessel conducted are normal port
 16 operations, i.e., normal cargo operations, both discharging and loading, repair work,
 17 fueling, and vessel movement, and that the Vessel always remains within the waters of
 18 the District, unless and until otherwise ordered by the Court. The substitute custodian
 19 shall notify the office of the U.S. Marshal prior to engaging in any such loading,
 20 fueling and vessel movement and again upon the completion of such activity.

21 6. That Marine Lenders Services, LLC, as substitute custodian, may if
 22 necessary offload any fuel and arrange for disposal of the same. The substitute
 23 custodian shall notify the office of the U.S. Marshal prior to engaging in any such
 24 offloading and again upon the completion of any such offloading.

25 7. That Marine Lenders Services, LLC, as substitute custodian, may, but is
 26 not required to, retain a marine engineer familiar with the vessel and to take him or her

1 on board the vessel with authorized agents of Marine Lenders Services, LLC to assist
 2 in the securing of the vessel.

3 8. That Marine Lenders Services, LLC, as substitute custodian, may, but is
 4 not required to, remove those pieces of electronic equipment on board the vessel, if
 5 any, which may be easily removed without damage to the vessel, and that such
 6 removed electronic equipment shall be stored in a safe, secure storage pending further
 7 Order of this Court.

8 9. That Marine Lenders Services, LLC, as substitute custodian, may, but is
 9 not required to, retain such services as are necessary to clean the interior and / or
 10 exterior of the vessel, remove food products with such services to be performed under
 11 the supervision of the substitute custodian.

12 10. That plaintiffs shall arrange to pay charges for moorage of the vessel and
 13 the fees, costs and legal liability insurance premiums of the substitute custodian and
 14 shall reimburse the substitute custodian for such other costs as may be incurred in
 15 conduction of the inventory of the equipment on board, in securing the vessel, in
 16 having the vessel cleaned, in moving the vessel, and / or in offloading any cargo or
 17 fuel from the vessel.

18 11. That subject to final approval by the Court, all fees, costs and expenses
 19 incurred by plaintiffs or the substitute custodian pursuant to the terms of this Order
 20 shall be deemed administrative expenses of the U.S. Marshal.

21 11. That plaintiff's attorney shall send a copy of this Order to the owner of
 22 the defendant vessel at the last address known by plaintiffs, and to the address shown
 23 on the record of the U.S. Coast Guard by Certified Mail, Return Receipt Requested.

24 IT IS FURTHER ORDERED that the substitute custodian may permit boarding
 25 and inspection of the defendant vessel by marine surveyors, representatives of
 26 plaintiffs, defendant and prospective purchasers in order to determine the vessel's

1 condition and value at a date and time convenient to the substitute custodian. All cost
2 of such boarding and inspections shall be paid by plaintiffs and shall be deemed
3 administrative costs herein. All persons entering on board the vessel shall execute a
4 waiver and release in the form attached hereto.

5 IT IS FURTHER ORDERED THAT all crew members shall remain on board
6 the defendant vessel and continue to operate and maintain all ship systems pending
7 further order of this Court.

8 It is further requested that the Clerk of this Court deliver three certified copies
9 of this order to the United States Marshal forthwith.

10
11 DATED this _____ day of _____, 2023

12
13
14
15 HON. JOHN C. COUGHENOUR
16 UNITED STATES DISTRICT JUDGE

17
18 Presented by:

19 /s/Thomas G. Waller
20 Thomas G. Waller, WSBA No. 22963
/s/Donald K. McLean
21 Donald K. McLean, WSBA No. 24158
Attorneys for Plaintiffs

22
23
24
25
26
[PROPOSED] ORDER RE: MOTION FOR SUB.
CUSTODIAN - 6
CASE NO. 3:23-cv-05011-JCC

ATTORNEYS AT LAW
BAUER MOYNIHAN & JOHNSON LLP
2101 FOURTH AVENUE, STE. 2400
SEATTLE, WASHINGTON 98121
TELEPHONE: (206) 443-3400